IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1869 of 2000
With
SPECIAL CIVIL APPLICATION No. 9921 of 2000

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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T J PANDYA MATRUCHHAYA HIGH SCHOOL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner
MS MINI NAIR AGP for Respondent(s) : 1 - 3
MS BANNA S DUTTA for Respondent(s) : 4,

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
12th October, 2007

ORAL JUDGMENT

These two petitions arise from a single subject

matter i.e., suspension of the respondent no.4-Kamlesh Pandya from service pending the disciplinary proceeding initiated against him. The petitioner in both these petitions is Smt. T.J Pandya Matruchhaya High School, a Non-Government Grant-in-Aid Secondary School [hereinafter referred to as, "***the School***"]. The respondent no.4-Kamlesh Pandya has been employed by the School as a Sr. Clerk.

It was alleged that in the year 1995, the said Kamlesh Pandya misappropriated a sum of Rs. 15,000/= plus, the amount of examination fees paid by the SSC students of the School. In respect of the said misconduct, a disciplinary proceeding was initiated against him. Pending the disciplinary proceeding, he was placed under suspension. The question arose with respect to the payment of subsistence allowance pending suspension.

In Application No.168 of 1999 filed by the said Kamlesh Pandya before the Gujarat Secondary Education Tribunal, Ahmedabad, by Order dated 5th February, 1999, the learned Tribunal stayed the departmental inquiry against the delinquent until he was paid the amount of subsistence allowance. It appears that the

said stay continued. The School did not pay subsistence allowance to the delinquent Kamlesh Pandya. Instead the suspension was revoked and he was reinstated in service on 3rd March, 2000. The said order of 5th December, 1999 was continued by further order dated 28th April, 2000. It is the said order dated 28th April, 2000 which is challenged by the School in above Special Civil Application No. 9921 of 2000.

In the above Special Civil Application No. 1869 of 2000, the School challenged the Government Resolution dated 20th May, 1992 by which Regulation 27-A has been inserted in the Gujarat Secondary School Regulations, 1974 in respect of the conduct of the disciplinary proceedings against the teaching and non-teaching employees of the School. The School, however, gave up its challenge to the said Regulation 27-A as has been recorded in the Order dated 17th June, 2002 [*Coram* : ***R.K Abichandani, J.***]. The School has also challenged the order dated 23rd February, 2000 made by the Commissioner of Schools holding that the disciplinary proceeding shall continue against the delinquent and that irrespective of the receipt

of the grant, the School was liable to pay subsistence allowance to the delinquent. By the said Order, the Commissioner of Schools further held that the disciplinary proceeding initiated against the delinquent was protracted on account of indifference at the end of the school. In view of the said observation, the Commissioner of Schools directed that subsistence allowance payable to the delinquent, after an initial period of six months, shall be recovered from the grant payable to the School.

Mr. Rao has submitted that at no point of time, the School was indifferent or was protracting the disciplinary proceeding. Under the regulations, the Committee of three members is required to be appointed to hold the disciplinary proceeding – one of the members in the Committee is required to be appointed by the District Education Officer. As the District Education Officer did not make such appointment, the disciplinary proceeding could not proceed further.

Miss Nair has relied upon the relevant Regulation No. 27-A. She has submitted that under clause [6] of Regulation 27A, a Committee of three

members is required to be constituted by the School management. One of the members shall be nominated by the management; one by the delinquent and the third member is required to be selected by the principal of the school from the panel maintained by the Gujarat State Secondary Education Board [hereinafter referred to as, "***the Board***"]. She has submitted that at the relevant time, a panel was maintained by the Board. It was for the principal of the School to select one person from such panel.

On perusal of the relevant regulation, it is apparent that both, the management and the delinquent servant, have a right to select its/his representative on the disciplinary committee. The third person, who should be the chairman of the committee, is required to be selected by the principal of the school from the panel maintained by the Board. The principal of the school is enjoined to inform the school management about such selection.

Further, the concerned students, whose examination fees were misappropriated by the delinquent, had preferred Special Civil Application No. 2001 of 1996 before this Court. In the said

proceeding, the delinquent-Kamlesh Pandya made affidavit dated 15th March, 1996. In the said affidavit he did admit that he was a senior clerk in the school and that he was assigned the duty of collecting examination forms and examination fees from the SSC students. That, though he did accept the forms and the examination fees, he did not report the said fact to the principal of the school nor did he submit either the examination forms or examination fees in the sum of Rs. 15,975/= collected by him. He, however, has stated that the said lapse occurred on account of his ill-health and oversight. He also tendered apology to the Court. It appears that though the delinquent confessed his collecting the examination fees and not depositing the same with the Board, he did not remit the said amount to the school either. In the circumstances, by Order dated 15th March, 2002 made on Special Civil Application No. 1869 of 2000, this Court [*Coram* : ***A.R Dave, J.***] directed the delinquent to deposit the said amount with compound interest @ 10% *per annum*. I am informed by Mrs. Dutta that in compliance with the said order the delinquent has deposited a sum of Rs. 22,787/= in

this Court.

Thus, though the delinquent was charged for a grave act of misconduct of misappropriation of the funds of the students and dereliction in duty committed as far back as in the year 1995, though he was placed under suspension and the departmental inquiry was initiated in the month of March, 1996 by issuing a formal charge-sheet, on account of various challenges before the Tribunal and before this Court, the departmental enquiry has not been proceeded further. The delinquent has been continued in service with impunity. He is on active duty and his salary is borne by the State Government i.e., from the public exchequer. Evidently, the school management and the delinquent are hands in glove and are acting in collusion with each other. It has also come on record that the delinquent was the son of the principal of the school. It further appears that the office of the District Education Officer has also become, knowingly or unwittingly, party to it. It is also apparent from the fact that no action was taken in this respect until the students, 152 in number, took initiative and approached this Court for appropriate relief to

allow them to take SSC examination. The learned advocate Mr. Hasurkar was required to be directed to seize and take inspection of the books of account of the school. By Order dated 9th April, 1997 made on Special Civil Application No. 2001 of 1996 [*Coram* : ***B.C Patel, J.***, as he then was & ***Myself***], the School had to be directed to deposit the amount of examination fees misappropriated by the delinquent.

In above view of the matter, particularly in view of the confession made by the delinquent-Kamlesh Pandya on oath before this Court, no further inquiry in the matter is necessitated. All that now remains is to impose appropriate punishment upon the delinquent-Kamlesh Pandya. I, therefore, direct that the delinquent-Kamlesh Pandya shall, *within* fifteen days from *today*, make a representation to the School management in respect of the aforesaid misconduct admittedly committed by him and in respect of any attenuating factors which may be taken into consideration by the school management while imposing punishment for the admitted guilt of the delinquent. On receipt of such representation, the school management shall grant opportunity of personal

hearing to the delinquent within one week from the date of receipt of the representation, shall consider the representation, and shall make order imposing appropriate punishment upon the delinquent within one week from the date of personal hearing. The order of proposed punishment shall be sent to the District Education Officer *forthwith* for his approval. The District Education Officer shall, immediately on receipt of the application for approval, take appropriate decision in accordance with law. The decision shall be communicated to the school management *forthwith*.

In the event, the delinquent Kamlesh Pandya fails to make representation as directed hereinabove, the delinquent will forfeit his right to make representation and to be heard. In that case, the school management shall proceed to impose appropriate punishment upon the delinquent.

The question who should bear the burden of subsistence allowance paid/payable to the delinquent shall be decided by the Commissioner of Schools after the disciplinary proceeding initiated against the delinquent in the month of March, 1996 stands

terminated. It will be the duty of the District Education Officer to inform about the termination of the disciplinary proceeding against the delinquent to the Commissioner of Schools within fifteen days from the date he makes the order on the application for approval.

Parties to these petitions shall be required to scrupulously comply with the directions issued hereinabove and submit compliance report to this Court. Non-compliance of any part of this Order will be treated as contempt of this Court. The erring party will be liable to face the contempt proceedings.

As directed by above referred order dated 9th April, 1997 made on Special Civil Application No. 2001 of 1996, it was the school management which had deposited a sum of Rs. 25,000/= with the Board to meet the amount of examination fees misappropriated by the delinquent. In the circumstances, I direct that sum of Rs. 22,787/= deposited by the delinquent in this Court be remitted to the petitioner-School management.

Subject to the above directions, both these petitions are disposed of. Rule in each petition is discharged. The parties will bear their own cost. The *registry* will maintain copy of this order in each petition.

{Ms. R.M Doshit, J.}

*Prakash**